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Government
Publication

Buying A Condominium

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Ministry of
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1. Introduction

Condominium housing is a relatively new concept in Ontario. However, since its appearance on the Ontario housing market in 1967, it has become an extremely popular form of home ownership.

People generally are inexperienced with condominium ownership and, as a result, few purchasers have understood fully what it is all about until after they've bought their own unit. Not surprisingly, misunderstandings and difficulties have arisen.

The Ministry of Consumer and Commercial Relations has prepared this pamphlet to help you, the prospective condominium buyer. It is designed to clarify some of the legal and technical aspects of condominium purchase and ownership before you buy.

2. What exactly is a condominium?

The term *condominium* applies to a specific type of property ownership rather than to any distinct style of building. Legislation governing condominiums is under the exclusive jurisdiction of the provinces. In Ontario *The Condominium Act* governs all condominium development and ownership. Originally, the Act was concerned chiefly with the registration of a condominium as a legal entity, but more recently, the Act has been amended to make it more responsive to consumer needs. The Condominium Act is administered by the Property Rights Division of the Ministry of Consumer and Commercial Relations.

Condominium ownership, whether it involves residential or industrial property, has a dual nature. A condominium owner holds negotiable title to

his own individual unit and, at the same time, shares with fellow owners the title and cost of operation of the balance of the property constituting the condominium.

The term "condominium" doesn't refer in any way to the physical structure of the building or building complex. Residential condominiums, for example, can be high-rise apartments, low-rise apartments, townhouses, detached houses, stacked townhouses — any configuration of housing you can imagine. What makes them "condominium" is not their physical structure, but the way in which individual owners have agreed to share ownership of common property, while retaining private ownership of the property which constitutes their own unit.

3. What advantages does condominium ownership offer?

There are a variety of advantages for preferring the condominium concept of housing. Some are:

- It is more economical, generally, than comparable, non-condominium housing.
- It enables people of moderate and middle income to own their own homes.
- It makes private ownership possible in areas where land values would ordinarily make this prohibitive.
- It eliminates some of the problems of upkeep and maintenance often associated with home ownership, since maintenance is usually the re-

sponsibility of a professional agency or manager.

- It allows the owner to accumulate equity through mortgage payments, and makes possible eventual resale at a better price.
- It often brings with it the advantage of planned development, with easy access to shopping, schools, public transportation and other facilities.
- It enables the owner to participate in the management of the project.

4. What is a condominium corporation?

A condominium corporation is a legal entity created by registering a *description*, a *declaration* and corporation *by-laws* with the Ministry of Consumer and Commercial Relations.

The *description* is a detailed plan of the layout and location of the development. It includes a survey of the land and details the location and outlines of the buildings and their structural plans.

The *declaration* outlines what constitutes the division of ownership within the corporation by detailing the common elements, the units and the percentage ownership each owner has in the common elements. If, for instance, a unit owner holds 2.5% ownership of the common elements, that owner will be expected to pay 2.5% of the expenses in maintaining the common elements. The size of the unit usually determines the percentage ownership that the owner of the unit has in the common elements.

The *declaration* may also detail the majorities necessary for making corporate decisions. Certain percentages are designated as majorities for various corporate decisions by The Condominium Act, but the condominium corporation's declaration may make the percentage majorities higher than those spelled out in the Act.

The *by-laws* of the corporation are the rules of the corporation by which every condominium owner is bound. The *by-laws* indicate how the corporation will be organized; what a unit owner may or may not do with his unit; and how common expenses will be assessed. Unless stated otherwise in the individual condominium declaration, the majority percentage of ownership for voting to change a *by-law* is 66⅔%.

The primary purpose of the condominium corporation is to manage condominium properties and business affairs. The Condominium Act provides certain rules regarding the keeping of adequate records and the conduct of business. Recent amendments to the Act outline in greater detail procedures to be followed by the corporation, including the conduct of general meetings, elections and the removal and replacement of directors.

The corporation or individual owners may take legal action to have the provisions of The Condominium Act, the *declaration* or the condominium's *by-laws* enforced among the individual owners.

5. What's mine and what belongs to the corporation?

All condominium projects consist of two parts: the *unit*, which is individual-

ly owned; and the *common elements* which are shared and jointly owned by all of the individual owners as condominium corporation members. The declaration outlines this in detail.

However, the declarations of any two condominiums corporations need not be the same. Areas designated as common elements in one condominium corporation might be as parts of individual units in another. In some condominiums, the common elements begin at the exterior wall of the individual unit; in others, the exterior wall of the individual unit is considered part of the unit. Such small distinctions can mean a lot when it comes to a question of payment for window washing service or repairs to the exterior brick of a condominium townhouse.

A *unit* usually consists of the premises in which the owner actually lives. A residential unit typically consists of a living room, kitchen, dining room, bedrooms, bathrooms, entranceway, hall

and closets. Townhouses and row-house units might include basements and garages as well. These premises are the exclusive property of the owner and he is responsible for their upkeep and maintenance.

The *common elements* are the parts of the development outside the individual units. These can consist of corridors, lobbies and elevators in apartment condominium projects as well as recreational facilities, parking areas, the grounds and structural parts of buildings. These are owned by the corporation and their upkeep and maintenance is a shared expense.

Some areas, known as *limited common elements*, are maintained by the condominium corporation, although they are restricted in use to one owner. Generally, balconies, individual parking spaces, storage lockers and lawns in townhouse condominiums are all limited in use to one owner, but the cost of upkeep and maintenance of the areas is shared by all owners.

How is a housing project registered as a **6.** condominium?

Under the terms of The Condominium Act, a project must have the approval of both the Ministry of Housing and the Ministry of Consumer and Commercial Relations before it can be registered as a condominium corporation.

Before a development can be offered for sale as condominium housing, the *description* must be submitted by the developer to the Plans Administration Division of the Ministry of Housing for approval.



The Ministry of Housing then requests the local municipality to express its opinions concerning the project, while the Ministry of Housing checks out its own concerns related to the development. On the basis of these comments from both sources, the Minister of Housing arrives at a decision to approve the project. This approval sometimes requires the developer to fulfill specified conditions before the project can be registered.

Following approval from the Ministry of Housing, units can then be offered for sale to individual owners as condominium housing, although the development *does not yet have condominium corporation status*.

The developer must present a *declaration*, a *description*, and by-laws to the Property Rights Division of the Ministry of Consumer and Commercial Relations, which ensures that these documents meet with all the essential provisions of The Condominium Act. When this has been done, the developer can then have his project registered as a condominium corporation.

After registration, the declaration or description can be amended or changed with the unanimous consent of the owners or by an application to a judge where there is a manifest error in either document which is inconsistent with the intent and purpose of the declaration or description.

7. How can I find out about the corporation and its rules before I buy?

By the terms of the Condominium Act, copies of the following documents now must be presented to you as a prospective buyer: parts of the *description*, the *declaration*, *by-laws*, the *Insurance Trust Agreement*, any existing *management contract*, and a statement specifying any recreational amenities to be provided. The developer must also give you an accurate estimate, in writing, of what you can expect the common expenses to be for the first year after registration.

If you are not given copies of these documents by the developer, you have grounds for terminating your agreement to purchase.



8. Can the corporation's rules be changed?

The procedures, obligations and unit boundaries noted in the description, declaration and by-laws are legally binding on all condominium owners and tenants. When you agree to purchase a unit, you agree to abide by all of the provisions contained in these documents.

By-laws may be amended later by a vote of members who own 66% of the property (or a higher majority if so outlined in the corporation's declaration). Once passed or altered, that by-law must be registered with the provincial government to be effective.

Although the provision for amending the by-laws exists, in practice it is often difficult to muster the necessary majority vote. If you are unhappy with a particular by-law before you buy, don't assume that it will be easy to change to your satisfaction after you move in.

Before agreeing to buy a condominium unit, you should examine each document carefully to ensure that you can live with all of its provisions.

9. I'm not a lawyer. How can I examine all of these documents?

Unless you are a lawyer, familiar with condominium purchase, the language of these documents can be very confusing. Before signing an offer to purchase, you should study all of the documents carefully yourself and then bring any doubts or questions you have on specific points to your lawyer's attention.

10. Some points you should consider:

- What are the conditions by which the developer or owner can terminate the agreement to purchase? When it is signed by both parties, an offer to purchase freezes the price of the unit. The agreement cannot be terminated arbitrarily by the developer unless you consent in writing or the developer obtains a court order.
- If you signed the offer to purchase before the project was registered, are you sure the declaration and by-laws you were shown are the same ones that were registered. If they are different, are there any changes you feel you can't live with? If there are, you have grounds for terminating the agreement.
- If a salesman or developer suggests that condominium units are available for sale only to certain groups of people (e.g. pensioners, to single adults, to adults only, etc.) be wary. Such a guarantee cannot be made.

- Does the developer have to accept your offer immediately, or can he consider it within a reasonable period of time before accepting? If the offer permits him to wait, can the delay affect the final purchase price of the unit?
- Do you get time to think the matter over? The developer is not required to give you the declaration, by-laws, etc., until you have signed an offer to purchase. If you are to have time to consider and examine these documents, the developer must agree to postpone acceptance of your offer. Try to get the agreement of delay in writing.
- A condominium unit cannot be transferred to private ownership until the entire project is completed and registered. Look at the present state of construction of the project you are interested in. Does it seem reasonable to expect construction to be completed by the promised date?
- You usually move into a new condominium unit before the project is registered. Is the money you pay the developer/builder considered rent, or are the payments applied against the final purchase price of the unit? In most cases, these payments are considered as rent. Under these circumstances, you must have possession of the deed to your unit before you can begin to pay off your mortgage. Be aware that it might be a long while between when you move into your unit and the time you receive the deed.
- Are there any repairs to the property itself which you feel should be made? If so, have an agreement drawn up guaranteeing in writing that the developer will correct any deficiencies in workmanship and do any necessary repairs at his own expense. In general, the condominium corporation is not responsible for any repairs to individual units.
- In any case, if the developer or his agent makes any representations to you when you are considering the purchase of a condominium unit, get them written into the offer to purchase.

11. What special laws bind a condominium developer?

The developer occupies a unique place in condominium housing. For one thing, he has a particular interest in registering the project and selling the units.

The Condominium Act regulates the developer's sales practices and his influence on the project through several important provisions:

- All money other than occupancy payments received by the developer from a unit purchaser on account of the sale of a unit must be held in trust by the developer. The purchaser is entitled to interest on this money paid from the time he is obliged to take possession of the unit until such time as a deed acceptable for registration is provided. *This provision for trust funds and interest applies only to monies paid to developers after June 30, 1975.*

- Once a developer signs an agreement of purchase and sale, he must take all reasonable steps to register the project under the Act without delay. He must undertake to sell all of the other units. And he must transfer the property deed to the buyer as soon as possible, after the project is registered. This means you can't purchase a unit as a condominium and then have the developer change his mind about the condominium status and decide to rent the rest of the units instead of selling them, except in exceptional circumstances which are outlined later in this booklet.
- An offer to purchase is not legally binding on the buyer if he was not given copies of the description, declaration, by-laws, the Insurance Trust Agreement, any existing management contracts and an accurate estimate of monthly common expenses.
- If the developer underestimates the project's common expenses for the first year, he must pay the difference in costs for one year after registration. This provision protects you from a developer who might deliberately underestimate the cost of common expenses in order to make his units appear more attractive to you. However, if the condominium corporation decides to terminate its contract with the management agency contracted for by the developer and increases in costs result from this change in management agency, the developer is not liable for these increases.
- It is now easier for owners to take legal action against an unscrupulous developer, since legal questions

dealing with condominium ownership can be settled by county and district courts. Prior to recent amendments to the Act, all disputes on condominiums could be settled only by the Supreme Court of Ontario.

- The developer must abide by all obligations specified in the agreement of purchase and sale and, from the date of registration until the management is taken out of his hands, he must keep full records of the project.

12. Can a developer lease units?

The developer's right to lease units is severely restricted by the amended Condominium Act. Only under exceptional circumstances will the developer be allowed to lease units in a condominium project. He may lease a unit only if:

- the tenant has already signed an offer to purchase the unit,



- the lease gives the tenant an option to purchase the unit; this option must be in writing,
- in every agreement of purchase and sale of the units of the property, notice is given of the proposed lease for residential purposes,
- notice to lease is given and the developer has been given permission by a court of law to lease.

Even under these circumstances, the maximum term for a developer's lease is two years. These rules do not apply where you are purchasing a condominium in a building which was previously a rental property.

13. Who manages condominium projects ?

Most condominium projects are run by management agencies. To date, attempts at self-management have been generally less efficient than professional management.



While day to day management decisions are normally made by an agency under contract to the corporation, final authority for policy decisions rests with the board of directors of the corporation. Directors are elected by corporation members for maximum terms of three years. But they can be removed by majority vote of members who together own a majority of the units at any time.

If the condominium corporation is unhappy with a management contract entered into by a developer or builder, the amended condominium legislation now permits the corporation to terminate this, provided the requisite 66⅔ per cent majority of ownership interests is obtained and the agency is given sixty days' notice in writing.

What control do unit owners have over **14. condominium affairs ?**

The condominium owner has the right to full participation in the affairs of the condominium corporation. By ballot or show of hands, condominium owners collectively make all major decisions for the project.

Decisions made by the board of directors will directly influence the use of common property and even what you can do with your own unit. For this reason, you should participate fully in corporation meetings and affairs.

As long as the developer or builder controls the majority of units, he can elect his own board and make all of the decisions for the corporation. The amended Condominium Act however, states that when the majority of the units have been sold, the existing board must resign so that a new board

can be elected. This ensures that the board represents the interests of the owners, rather than those of the builder or developer.

In addition, the Condominium Act now ensures that all the condominium corporation's records regarding common expenses are available for examination by any owner or mortgagee. Money paid by owners to meet common expenses must be held in a separate trust account for that condominium, thus eliminating any abuse of common funds.

15. Who is allowed to vote in condominium decisions?

To determine who is eligible to vote, the corporation keeps a register of owners. This register lists the owner's name, address, unit and share of the common elements. Each owner, provided he is listed in the register, has a right to vote at members' meetings. Whether the vote is on a *per-unit basis* or is based on *ownership interest* (percentage share of the common elements) depends on the issue under consideration.

The Condominium Act specifies which voting procedure is to be followed, and sets minimum majorities required to carry these issues. House rules, for example, can generally be changed by a simple majority of unit holders (*per-unit basis vote*), while by-laws can be altered only on the basis of *ownership interest* and require, at a minimum, a 66% per cent majority. In each case, the majority required for passage may be higher. It depends on the specific condominium declaration.

Where decisions are reached by ownership interests, the percentage of the property owned by a person equals the percentage of that person's voting share. Thus, if an individual owns 2.5% of the property, for example, he is entitled to 2.5% as his voting share. This means that, in the consideration of some issues, the owner of a four-bedroom condominium apartment will have greater voting power than the owner of a one-bedroom condominium apartment.

Where a mortgage is held against a condominium unit, the person or institution holding that mortgage may exercise the owner's voting share, provided he notifies the owner of his intention to vote.

16. How does condominium living affect me as a unit owner?

In some cases and for some people the effect can be profound. Condominium living may be very different from your accustomed style of life. Condominium ownership is unlike either regular home ownership or renting. The following items point out just some of these differences:

- The condominium manager has the right to enter any unit if it's necessary to get his work done. He can do this whether the owner is present or not.

- If an owner does not abide by the Act, declaration, house rules or by-laws, the corporation has the right and the obligation to sue him. You, of course, as an individual owner, have the same right of recourse to the courts to see that these provisions are enforced.
- The condominium corporation can, against the wishes of a minority of the members, undertake major expenses such as building a recreation centre or a day nursery. In spite of your protests, you, as a unit owner, are obliged to help cover such expenses.

17. Are there restrictions on what I can do with my own unit ?

Yes. A condominium owner's rights of ownership are more restricted than other homeowners'. The following examples indicate some of the ways in which he is limited:

- A condominium owner must abide by all of the provisions of The Condominium Act, the corporation's declaration, by-laws and house rules.
- The Act specifies that the declaration of a condominium corporation may restrict "gifts, leases and sales of the units and common interests". (To date, however, this provision has not caused any serious difficulties. In general, the condominium owner can sell, rent, lease or transfer title of his unit at his discretion.)

- No owner may damage or neglect his unit. To do so would depreciate the value of the project as a whole.
- Many declarations specify that units can be used only as a private, single-family dwelling; they cannot be used for commercial purposes.
- Usually the owner is forbidden from any action which could threaten the project's insurance coverage (like having a barbeque on the balcony, for example) or making any structural alteration to his unit without the consent of the condominium corporation's board of directors.

18. Can I lease or rent the condominium unit I own ?

There are no statutory restrictions on the owner's right to lease condominium units, but amendments to The Condominium Act severely restrict the developer's right to lease units.

Unless he is restricted from doing so by the provisions of the declaration, a condominium owner can sell, rent, lease or transfer title of his unit at his discretion. The tenant, of course, is bound by the same rules and regulations as the owners.

19. What is the status of leasehold condominiums ?

Leasehold condominiums (condominiums build on land owned by and leased from the Crown or any agency of the Crown) have been approved in principle by the Government; the specifics of leasehold condominiums are still under review.

20. What expenses should I expect to pay when I buy my unit?

This is a question many buyers don't consider carefully enough when purchasing a condominium. The financial obligations you will have to meet typically include:

- Mortgage payments
- Taxes
- Monthly condominium maintenance fee and reserve fund fee for emergency expenses
- Utilities (if not included in the maintenance fee).

In addition, at the time of purchase, the following expenses usually have to be met:

- Downpayment
- Land transfer tax
- Lawyer's fees
- Adjustments

When a buyer takes possession of a condominium unit, he often has to pay certain expenses back to the previous owner. These expenses, known as *adjustments*, can include utilities and common expenses paid in advance, or money held for the unit in the project's reserve fund.

Look carefully into the matter of costs you will have to pay to maintain your unit. Consider the following when you prepare your cost estimates:

- Are there any hidden charges to pay when you close the purchase? For instance, are you required to pay operating expenses in advance?

- What services are included in common expenses? Are utilities, for example, a common or an individual expense?
- What additional charges can you expect? How and when are taxes and insurance premiums levied on the owner? Does the project's present insurance plan offer full coverage, or will you have to take out additional insurance to protect your unit?
- What will the monthly operating cost be? Does the estimate of maintenance charges you were given seem like a reasonable one? Bear in mind that you are directly responsible for your share of the operating expenses of the project. You and other owners in the project will have to increase your monthly expense payments, if necessary, to keep up with rising costs.
- How much of the monthly maintenance charges are allocated to the contingency reserve fund? The higher the amount paid to the contingency reserve fund the less you will be required to contribute at a later date when major expenditures are required.

21. Do I pay property tax?

Condominium owners pay the same property taxes as other homeowners. The condominium corporation, however, does not pay corporation taxes. This is the basic tax status of the condominium project.

**I've found a
condominium that
looks good to me.**
22. How can I evaluate it?

Talk to owners already living there. They can fill you in on the quality of construction, how well the condominium is managed and what problems they've run into. You can also see whether they are the kind of people you will like as close neighbours and whether condominium living is right for you and your family.

Evaluating a condominium that is just getting started is a little more difficult. Consider whether the neighbourhood seems to be growing into a pleasant residential area or whether there are indications that commercial or industrial building may be in process; the type of neighbourhood will affect the resale value of your unit.



If some units have been completed it may pay you to call in a residential architect to check the quality of construction; you will have to pay for repairs to your own unit and share the cost of repairs to the common elements. Ask what steps have been taken to soundproof walls and floors between living units, for inadequate sound control can be a major headache in a multi-family dwelling.

**Where can I get more
information about
23. condominium housing?**

Pamphlets describing condominium ownership are available from the Ontario Housing Corporation (Home Ownership Made Easy) and from the Central Mortgage and Housing Corporation (Home Ownership Through Condominium).

The Ministry of Consumer and Commercial Relations will also be publishing a guide for condominium owners and administrators called 'Living in a Condominium'.

The Ontario Condominium Association (a non-profit association of condominium owners) will provide information on condominium purchase and ownership to people interested in buying a condominium.

Other condominium owners can be valuable sources of information for you. Don't be rushed into making a decision. Buying a condominium may well be the largest financial commitment you have made, so consider the matter carefully. Weigh the advantages against the disadvantages: Get as much information and advice as you can on all aspects of condominium ownership before you make the final decision to buy.

Condominium information address list

MINISTRY OF CONSUMER AND COMMERCIAL RELATIONS

**Write: Ontario Consumer
Queen's Park
Toronto, Ontario**

Phone: 965-3248

MINISTRY OF HOUSING

**Write: Information Services
Ministry of Housing
101 Bloor Street West
Toronto, Ontario
M7A 2N5**

ONTARIO CONDOMINIUM ASSOCIATION

**Write: Ontario Condominium Association
84 Castlebury Crescent
Toronto, Ontario
M2H 1W8**

Phone: 493-7762

CENTRAL MORTGAGE & HOUSING CORPORATION

**Write: CMHC
650 Lawrence Avenue West
Toronto, Ontario
M6A 1B2**

Phone: 361-0420

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